

U.S. Department of Justice
Immigration and Naturalization Service

TESTIMONY OF
DONNA KAY BARNES
CHIEF INSPECTOR, DIVISION OF INSPECTIONS
IMMIGRATION AND NATURALIZATION SERVICE
BEFORE THE
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
ON
H.R. 694
June 26, 1997

Mr. Chairman and Members of the Subcommittee, I welcome this opportunity to comment on H.R. 694, a bill which would affect the Canadian Border Small Boat program, popularly known as the I-68 program.

Before commenting upon this bill, I would like to provide an overview of the I-68 program. Section 235(a)(3) of the Immigration and Nationality Act requires all aliens who are seeking admission, readmission or permission to transit through the United States to be inspected by an immigration officer. Title 8, Code of Federal Regulations, Section 235.1 requires that a person claiming United States citizenship must establish that fact to an immigration officer's satisfaction and that he or she must do so at a United States Port-of-Entry during the time the port is open for inspection, unless otherwise exempted.

Recognizing that the Service is unable to maintain a presence at every convenient landing point, the I-68 Program was established in 1963 to facilitate boating and pleasure fishing on boundary waters in Minnesota. It was expanded in 1967 to additional areas. The program was implemented along the entire northern border several years ago when the Service districts began a publicity campaign to educate boaters as to the requirements for entry into the United States by boat and the benefits of obtaining an I-68 or Canadian Boat Landing Permit. During FY 1996, approximately 1,000 permits were issued by the Service.

As currently structured, the program is available to citizens or permanent residents of the United States, citizens of Canada or landed immigrants of Canada having a common nationality with Canadians who arrive on a small pleasure boat of less than five net tons along a northern border waterway. Those persons who are neither citizens nor permanent residents of the United States are further restricted to a visit for pleasure not to exceed 72 hours in duration and which does not require travel beyond the immediate shoreline area, to include residential and shopping areas. All entries by other means or for other purposes by persons who are not citizens or permanent residents of the United States are not allowed. Such persons must report in person for an inspection at a United States Port-of-Entry at each entry.

Service District Offices have made the permits readily available by sending inspectors to marinas and boat shows and involving boating organizations in the process. Until recently, the I-68 was issued gratis. However, in 1995 the Service published regulations establishing a fee for the adjudication of the application for an I-68. This action resulted from an audit by the Department of Justice's Office of the Inspector General, which determined that in accordance with the Independent Offices Appropriations Act of 1952 (commonly referred to as the "user fee statute"), 31 U.S.C. 9701, the I-68 is a public benefit which must be supported by user fees. Further, the respective Appropriations subcommittees of the Congress have premised the authorization of certain land border inspections positions on the collection of this fee. It is the imposition of this fee which has resulted in an unprecedented number of complaints about the program.

The fee for an I-68 is set at \$16.00 per individual with a family cap of \$32.00. The statute referenced earlier requires that this fee be set at a level which ensures the recovery of the full cost of adjudicating the application and any additional costs associated with the administration of the fees collected.

There has been much misleading information that the Service is requiring all boaters to obtain a permit. This is incorrect. There is no requirement to obtain Form I-68. However, boaters who choose not to obtain Form I-68 must report in person for inspection at a Port-of-Entry upon each trip to the United States. This is the same requirement applicable to every person, including U.S. citizens, seeking to admission to the United States at other land and air Ports-of-Entry. Boaters who have not obtained Form I-68 may report, in person, either to an Inspector of the Immigration and Naturalization Service or an Inspector of the United States Customs Service. Inspection by the Customs officer will satisfy the Service requirement of reporting in person for immigration inspection. Telephonic inspections, while allowed by the Customs Service regulations to satisfy its reporting requirement, are

not authorized by the Immigration and Nationality Act, as amended.

United States citizens who enter the United States without Form I-68 or without reporting in person for inspection may be subject to fines or criminal sanctions. Boaters who transport aliens who are not in possession of Form I-68 or who have not reported in person for inspection are subject to arrest, fine, imprisonment, and possible seizure of the boat. Non-United States citizens traveling by boat who do not have Form I-68 or who have not presented themselves for inspection are subject to arrest, possible fine, or removal from the United States.

In the minds of many persons on both sides, the border between Canada and the United States is often no more than a line on the map. This is a reflection upon the long history of amicable relations between our two countries. In spite of this well-established relationship, attempts at illegal entry to the United States from Canada still occur annually. For example, Canada currently allows citizens of many nations to enter Canada without a visa. Some of these countries have not been able to qualify for inclusion in the Visa Waiver Pilot Program in the United States. Numerous instances have been detected along the northern border of individuals from these countries attempting to enter the United States along the Canadian border. In Fiscal Year 1996, over 95,414 individuals were refused admission, or withdrew their application for admission, or were referred to an Immigration Judge at Ports-of-Entry along the northern border. While it is not well known, according to the INS official estimates, Canadian citizens themselves are the fourth largest illegal immigrant population in the United States. The Service has also detected known terrorists attempting to enter the United States over the northern border. Not to belabor the point, the northern border is not risk free and it is the belief of the Service that any program which would facilitate travel between the two countries must not increase the potential for abuse by those persons who might be tempted to take advantage of our desire to make travel across an international boundary easier for the legitimate traveler.

This factor is especially important as the Service begins to implement the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 96 Act). The 96 Act requires the Service to take certain measures to deny admission by persons who are not eligible to enter the United States. As those measures begin to impact upon the flow of inadmissible persons through the Ports-of-Entry along the northern border, we expect to see some of that flow being diverted to the areas between the Ports. Some persons might well ask, "Where are the hordes of illegal immigrants seeking to enter the United States across the waterways dividing our country from Canada?" The answer is that they may be in Canada waiting for us to relax our control over the border.

The Service does not believe that the provision which would exempt United States citizens in possession of a United States passport from having to obtain a permit reflects a clear understanding of the current rule. Boaters seeking to enter the United States are not required to obtain a permit now. As indicated above, a person may choose not to obtain a permit, although they must then report for immigration inspection.

The Service believes that every person seeking to enter the United States must be seen by an officer of a Federal Inspection Service in order to comply with the requirements that Congress has established and to prevent the entry into the United States of those who are ineligible to enter legitimately. Once having been seen and vetted as a low risk person, the Service believes that it may be an acceptable risk to allow these approved individuals to cross the border unsupervised for a limited period of time. This belief is expressed in a number of Service programs such as INSPASS, SENTRI, Automated Permit Ports, Dedicated Commuter Lanes, and the I-68 program. Like the I-68 program, individuals in these other programs must be seen and vetted yearly by a Service officer. There is no indication that participants in those other programs believe the Service is imposing an undue burden on them in order to participate.

As I mentioned in my earlier remarks, the bill, as written, does not seem to reflect a clear understanding of the existing I-68 program, as it is not mandatory for a boater to obtain an I-68

permit. However, if it is the intention of the bill to exempt United States citizens who are passengers or crew on small boats, including commercial vessels, from inspection, the Service does not believe that this would be a sound policy. For example, a ferry is a commercial vessel and in this example, United States citizen passengers or crew on a ferry would be exempt from Immigration inspection. This provision would, for the first time, create an exception in statute from the requirement that every person seeking admission to the United States be admitted on the basis of an interview by an officer of the United States Government. If boaters are granted an exception then what should the Service say to hikers, skiers, horseback riders, and others who might want similar treatment? The result would likely be a loss of control over the northern border.

I also have to question the likelihood of a United States citizen, assuming that he or she remembered to take it at all, would be willing to risk taking his/her passport out in a boat where it might become ruined from the water and sun. Members of the committee should also be aware that under the current rule governing travel by citizens of the United States, no citizen is now required to be in possession of a passport when returning to the United States from Canada. This bill would change that long-standing rule.

The bill is also unlikely to reduce the burden on the boating public, as it would substitute a \$55.00 document for each person to purchase and carry for the I-68 which costs a maximum of \$32 for an entire family. The reaction of the boating public to what they will perceive as a new Service imposed requirement will be both negative and vocal. An additional negative publicity factor will be that our Border Patrol agents will now have to detain boaters while they call for a check against Service lookout databases. One of the advantages of the I-68 program is that the Border Patrol agent in the field knows that these databases, the FBI's national arrest warrant database for example, has already been already been queried on permit holders. This means that the Border Patrol can quickly complete its check of the boater and continue on with its mission. Having to call and wait while the check is being made will result in less security on the northern border.

In general, INS has other concerns with the language in this bill. It refers to trips of less than 72 hours duration. How is are these to be measured and does it mean trips to Canada or from Canada? Does the United States passport have to be valid or will an expired passport with a ten-year old photograph suffice? Additionally, the bill does not clearly address situations where there are both United States citizens and non-citizens on board.

Let me conclude my prepared remarks by briefly mentioning a program which the Service is implementing along the St. Lawrence River and which we believe may have the potential to meet our concerns with enforcement while easing the burden on the legitimate boater.

As a result of language included in our most recent supplemental appropriations bill, in the towns of Morristown, Ogdensburg, Waddington, and Clayton, New York, the Service is installing video telephones for use by boaters who are not in possession of an I-68. Video telephones attach to a telephone line and, as the name implies, allow callers at each end of the connection to see and hear each other. This concept is very similar to other programs, such as the Automated Permit Port and Remote Video Inspection System, which the Service has been testing for several years. In our implementation, the boater will dock at a marina, proceed to the video telephone and call an immigration inspector. The inspector will conduct a face-to-face inspection of the individual and, upon approval for entry to the United States, issue the person a control number which the boater will use to establish his/her lawful admission in the event he or she is encountered by an officer of the Border Patrol. Video telephones are relatively inexpensive. While the Service has bought the video telephones which will be used in New York, the price might eventually fall to a level where operators of marinas or dockside restaurants might find it attractive to purchase them for use by their clientele.

This completes my testimony and I am available to answer your questions.